

File IV

ODP 8-0349
28 February 1978

MEMORANDUM FOR: Assistant for Information, DDA
FROM:
Chief, Management Staff, ODP
SUBJECT: Intelligence Charter Legislation
REFERENCE: Memo to Multiple Addressees fm Associate
Director-Management, National Foreign Assessment
Center, 23 February 1978 (NFAC-729-78)

BACKGROUND

The paper attached to the referent memorandum has been reviewed by senior ODP personnel and there are no comments from an ODP viewpoint.

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07 MAR 1978

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MEMORANDUM FOR:

Systems for Information, DDA

FROM:

Thomas B. Yale
Director of Finance

SUBJECT:

Intelligence Charter Legislation, S-2525

REFERENCE:

NFAC 729-78, dtd 23 February 1978

1. This memorandum provides comments on paragraphs of the Issues Paper attached to reference which are of particular relevance to our responsibilities. In addition, we are providing our comments on other sections of S-2525 which we believe warrant attention.

a. Comments on:

- (1) Paragraph 3. We agree with the importance of the need for the proposed change.
- (2) Paragraph 12. We agree with the need for clarification of the areas identified.
- (3) Paragraph 17. We support the conclusion stated.
- (4) Paragraph 20. The proposed change appears to have been made in S-2525.
- (5) Paragraph 21. Is it the intent of the proposed language to remove the limitation applicable to government agencies generally which allows use of proceeds from personal property for replacement purposes only during a time period which expires at the end of the fiscal year following fiscal year of the sale?
- (6) Paragraph 22. We believe the entire thrust of Section 421(d)(1) is too restrictive. Current Agency regulations recognize a number of circumstances in which it may be prudent for a proprietary to possess funds in excess of "normal" requirements. It would be unwise to lose the flexibility to allow proprietaries to retain funds at whatever level is deemed

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necessary either for unique non-recurring operational reasons or as necessary for the proprietary to appear to be adequately funded in relation to the pattern common to the general area of business in which the particular proprietary is engaged.

- (7) Paragraph 23. We support the question.
- (8) Paragraph 31. We support the requirement for additional language but suggest that the concept of case basis advance approval for individual expenditures be deleted.
- (9) Paragraph 32. We agree that the issue is in doubt, it should be clarified.

b. Comments on S-2525:

- (1) Pages 18 and 22, Section 104(24(A)) & (B) and Section 113(a). These sections and others clearly contemplate an Office of the Director of National Intelligence separate from the Central Intelligence Agency. In the interests of administrative efficiency, we have contemplated the continued use of a single appropriation to cover activities under the direct cognizant of the Director (IC Staff excepted). We hope that there is nothing in the proposed language which would provide a statutory bar to a single appropriation.
- (2) Page 25, Section 113(e) and 113(f). There seems to be a dichotomy in requiring that a military director or deputy director be compensated "only from funds appropriated to the Office of the Director" concurrently with requiring (113(f)) that such an officer be entitled to the difference between his military compensation and Agency compensation entitlement. X
- (3) Page 26, line 25. The cited subsection (e) makes no direct provision for rates of compensation. X
- (4) Page 35, Section 116(a). Should there be a provision for compensating assistant directors of National Intelligence who may be commissioned officers for differences between Military and Agency entitlements. X

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- (5) Page 37 and Page 180, Sections 117(a) and 412(a). Is the Agency in agreement that there need be no statutory provision for a Deputy Director of the Central Intelligence Agency?
- (6) Page 40, Section 1²2(b). In the absence of identification of any particular appropriation is it the intention to allow the DNI the specified certification authority for funds in the National Intelligence budget regardless of which Intelligence Community entity? X
- (7) Page 184, 185, Section 421(a)(1). To the extent that this section is to provide the authority by which the Agency is to receive its "appropriation" through the appropriations of others, it seems unnecessary as required by lines 3 through 6 that the Director be required to make a certification that limitations on the covering appropriation would unduly impede the performance of Agency functions.
- (8) Page 187, Section 421(b). The purpose of this section as a separate section in addition to 421(a)(1) is not completely apparent. Do either or both of these sections have the affect of subjecting Economy Act transfers to the specific approval of the Director of National Intelligence and the Director of Management and Budget? We recommend opposing such a requirement, if intended, inasmuch as the authority for Economy Act transfers is available to all Government agencies when necessary to promote effectiveness of operations and we believe it inappropriate to subject this Agency to any unique approval requirements.
- (9) Pages 188 and 189, Section 421(d)(2). It would appear that the proposed \$50,000 threshold in comparison to the value of proprietaries which can be liquidated without external reporting to the Attorney General and the Comptroller General of the U.S. is unreasonably low.
- (10) Page 196, Section 425(a). In addition to the comments in paragraph 1a(8) above, we believe "for activities" should be deleted from line 24 or the sentence otherwise be revised to preclude the word "activities" appearing to be antecedent for "authorized by legislation enacted during the same. . ." We continue to believe that the reference in this section to prior year authorizations may contemplate use of multiple year appropriations and again

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emphasize the cost effectiveness of conducting CIA activities under a single annual appropriation as has been done until now.

- (11) Page 197, Section 425(b). We suggest omission of the requirement for direct reporting on expenditures certified by the DNI under the authority of this section. Data on expenditures so certified will be reflected in the Agency Annual Financial Report.
- (12) Page 199, Section 425(c)(3). We are not clear as to the purpose of the requirement in this section to the effect that expenditures and financial obligations be approved by the Director and the Director of OMB. It seems redundant in our view to preceding paragraphs of Section 425(c). A literal interpretation of the language based on the technical meaning of financial "obligations" would require each individual transaction representing a binding agreement for expenditure of funds (an obligation) to receive the prior approval of the Director and the Director, OMB. We suggest deletion of this section.
- (13) Page 204, Part E. In the interest of consistency with the content of the text, we suggest the title be expanded to read "Travel and Related Expenses and Allowances; Retirement System."
- (14) Page 205, Section 441(a)(3).
 - (a) The stated definition does not comport with legislation referred to in Part E nor to other Federal Regulations relating to travel and allowances of which we are aware. On the basis of our review of definitions and standards used in 5 USC and 22 USC as well as the Federal Travel Regulations and the Foreign Affairs Manual, we suggest that consistency in the relationships could be best served by the following definition:

"The several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, the territories and possessions of the United States, and the Canal Zone."

Notwithstanding the foregoing suggestion it may be relevant to assess the potential political impact in new legislation of a definition which includes the Canal Zone as part of the United States.

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(b) Germane to the above are the following observations about observed inconsistencies in the present definition of the United States.

1. The Virgin Islands and Guam are both Unincorporated Territories and are virtually identical as to their legal, political and physical status - and similar as to economy, population, climate, geographic location, etc. The case for treating one as being in the United States and other in a "foreign area" is not clear.

2. The Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands (established 9 Jan 1978) are similar, though not identical, as to legal, political and physical status. Here again the differentiation of one as within "the United States" and the other as a "foreign area" is not clear.

3. Although the Pacific Island possessions of the United States, over which the U.S. exercises sovereignty, would be "foreign areas" for travel entitlements, the Canal Zone which does not fall under U.S. sovereignty (only acting "as if" if exercised sovereignty per the current treaty) and which is to be progressively geographically contracted until it disappears in 1999 is considered within "the United States."

4. This definition will create inherent inconsistencies between this legislation and the existing legislation (5 USC and 22 USC) which it references because of the substantive differences in their geographical definitions and applications. In addition, it creates the possibility of serious inequities in the entitlements and benefits applicable to employees who are American citizens and natives of or residents of U.S. Caribbean territories and possessions as opposed to U.S. Pacific territories and possessions. For example, employees with family ties in the Virgin Islands or Puerto Rico would potentially be entitled to home leave travel to those places, while employees with family ties in Guam or American Samoa would not be entitled to such home leave travel. Home leave could be taken in the V.I. or P.R., but not in Guam, Samoa, etc.

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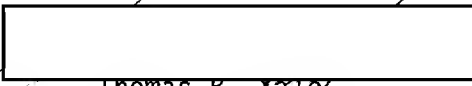
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- (15) Page 206, Section 441(b)(2). In the interest of clarification, it is suggested that lines 2 through 5 be restated to read as follows:

"59 of title 5, United States Code, travel, transportation and subsistence expenses and other allowances and benefits in the same manner and under the same circumstances as provided employees of the Foreign Service under title IX"

- (16) Page 206 and 207, Section 441(b)(2). To be consistent with the Foreign Service Act the term "employees of Foreign Service" should be changed to "officers and employees of the Foreign Service." (Lines 9 and 14 page 206 and line 2 page 207.)

- (17) Page 208, Section 441(d)(1). This section appears to provide authority for payment of certain expenses and benefits and allowances for reasons of operational necessity or security when the means (emphasis added) of paying such expenses authorized in previous sections should not be utilized. The intent is not clear because the sections cited seemingly make no provision as to the "means" of payment.


Thomas B. Tate

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ADMINISTRATIVE — INTERNAL USE ONLY

8 MAR 1978

MEMORANDUM FOR: Assistant for Information, DDA

FROM: James H. McDonald
Director of Logistics

SUBJECT: Intelligence Charter Legislation, S. 2525

REFERENCE: Multiple adse memo fr [redacted] Associate
Director - Management, NFAC, dtd 23 Feb 78, STAT
same subj (NFAC 729-78) (OL 8 0766)

1. This Office has completed its review of the "issues paper" attached to the reference memorandum. Except for those items specifically addressed herein, we have no comments or suggestions to make on the other questions.

2. The following responses are keyed to the issue numbers:

Number 3: We agree with the definition of "proprietary" as set forth in 3b.

Number 10: We believe your reference is to Section 413 (g)(2). Section 411 specifically states that this "Agency shall be under the direction and control of the National Security Council (NSC)." The charter legislation appears to be sufficiently clear that the Agency will be under the direction and control of NSC. The Director of National Intelligence (DNI) receives his direction from NSC. To add "under the direction of NSC" would seem redundant. This addition in Section 413 (g)(2) might bring into question under whose direction the provisions in the other paragraphs are to be carried out.

Number 13: Paragraph 413 (g)(5) as worded seems sufficient to provide for the support of the Office of the Director of National Intelligence. In the category of administrative support is included: security, personnel, communications, logistics, training, medical

OL 8 0766a

SUBJECT: Intelligence Charter Legislation, S. 2525

services, and finance activities. Even if the DNI and the Director of Central Intelligence (DCI) is not the same individual, support to the Office of the DNI can be provided under the provision of this paragraph without any difficulty.

Number 16: We concur in the recommendation and the language of a new subsection 413 (i). However, it would appear that the subsection is out of sequence if left to the end of paragraph 413. We suggest a new subsection 413 (g)(5) and the (5) becomes (6). Remove the word "above" from line 3 of the proposed paragraph.

Number 18: We concur in the recommended changes suggested for inclusion in Section 421 (a)(6).

Number 21: Management of property, including its disposal within the continental limits of the United States, is adequately covered in the Federal Property and Administrative Services Act of 1949, as amended. However, we suggest that a new subsection 421 (a)(18) address the disposal of foreign excess property as follows:

"Dispose of foreign excess property by destruction, abandonment, or by donation, ~~sell~~^{sale}, or transfer to a foreign government notwithstanding any other provisions of law, and under procedures approved by the Attorney General, when the Director deems such action necessary to the successful performance of the functions of the Agency or to protect the security of Agency activities."

Number 26: We believe procurement authority is sufficiently covered in Section 422. There is a procedural problem with subsection 422b. This paragraph provides that the Director can waive compliance with the Army Services Procurement Regulations, but that he must report any waiver to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, together with reasons for exercising such waiver. It is not clear if a report is required prior to or subsequent to exercising the waiver, nor

SUBJECT: Intelligence Charter Legislation, S. 2525

is the format or procedure for reporting understood. Proposed bill S. 1264, The Federal Acquisition Act of 1977 (Chiles Act), will replace the current Armed Services Procurement Act contained in Title 10, U.S.C. It appears that Section 422 was written without considering the impact of S. 1264.


Number 27: With reference to paragraphs 139 and 422 (c) - this is difficult to assess without knowing what the procedures approved by the Attorney General will be. Procurement and contracting activities could be impeded if the Director is to obtain an approval each time.

Number 31: We agree to the suggested revision to Section 425.

Number 35: We do not agree that the appointment of the General Counsel in paragraph 426 (a) should be subject to the advice and consent of the Senate for reasons stated in the issues paper.

Number 39: We agree with the proposed language change to paragraph 431 (c)(1).

3. We purposely did not comment on number 19, since we are confronted with the limits of general authority and the finite application of specific prohibition or permission to carry out the myriad of functions inherent in the logistics mission. For example, the authority to procure as contained in Section 422 carries with it the necessity to store, account for, transport and dispose of property within the confines of existing law or under such waiver(s) as may be granted. We choose to let Section 421 stand as written except as noted elsewhere in this paper. Any attempt to enumerate each separate responsibility could encumber any action with an unnecessary burden of waiver.


for James H. McDonald

STAT

9 MAR 1978

MEMORANDUM FOR: Deputy Director for Administration

FROM :
Acting Director of Personnel

SUBJECT : Intelligence Charter Legislation

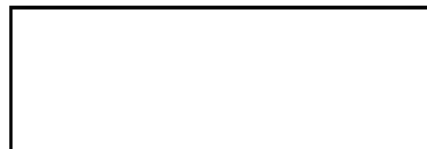
REFERENCE : Multi adse memo fr AD-M/NFAC dtd 23 Feb 78,
same subject

1. Forwarded in response to reference request are Office of Personnel comments on Title IV of Senate Bill 2525.

2. The OLC paper has been reviewed, and while all the points are not covered in this memorandum, it is agreed the issues identified by OLC need to be clarified or revised as proposed. A principal area of difficulty in commenting on the proposed Title IV in relation to the implementation of the provisions is the ambiguity over the relationship of the Office of the DNI with the Central Intelligence Agency. The experience with the IC Staff should serve to point up the problems posed by having one agency provide the administrative support, including statutory requirements such as appointment and separation of personnel, for another separate entity without clearly defined responsibilities and functions.

3. The attached comments are addressed to the specific items which our review of Title IV identified as matters of concern in the particular area of personnel/administrative concern.

Atts.



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TITLE IV - S 2525

(Page references are to the 9 February release copy of S 2525)

Section 411(a), page 4 (180)

CIA is under the direction and control of the NSC.

Comment:

Defer to the legal opinion as to whether this expanded phrase is significantly different from the wording of the CIA Act of 1947 which establishes CIA under the NSC and in 102(d) provides for various functions of the Agency "under direction of the NSC".

Section 412(a), page 5 (180)

As in Title I, provision is made herein for the DNI, the DDNI or an ADNI to "act" as the Director of CIA.

Comment:

The ambiguities of the Office of the Director and CIA as separate entities were noted in the comments on Title I.

If the President, as provided for in Section 117, can "transfer all duties and authorities of the DNI" to the DDNI or an ADNI, the term "act" appears inappropriate as indicating a temporary situation which is not the intent per the SSCI comments on Section 117. "Serve" would be a more appropriate word for a permanent situation. Section 117 does not use the term "act" although it is used in Section 114(d).

Agree with OLC on the lack of clarity relative to delegable powers, among all other ambiguities of this possible dual role.

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(1) set-off against accrued pay, retirement credit,
or other amount due such person or his estate,

(2) a deduction from any amount due such person from
the United States, or

(3) such other method as is authorized by law,
unless the Director or his designee determines that recovery of
any such sum will not be in the best interests of the United
States.

(f) The Agency may, when the Director shall find it to be
in the best interests of the Government to do so as a means of
eliminating transportation costs, provide assigned persons with
basic household furnishings and equipment for use on a loan basis
in personally owned or leased residences in foreign areas or in
remote areas of Alaska.

(g) Under such regulations as the Director may prescribe,
the Agency, with respect to its employees assigned to duty
stations in the United States, may waive the applications of the
provisions of sections ____ and ____ of Public Law 89-516 for
certain employees when the Director deems that the official
change of station involved is of such a limited duration as to
warrant the waiver.

(h) Death Gratuities for Certain Agency Employees

Under such regulations as the Director may prescribe, the
Agency is authorized to provide for payment of a gratuity to
surviving dependents of any Agency employee, including any

[REDACTED]

[REDACTED]

ending of death under
as a result of

injuries sustained in the performance of duty in a foreign area
or the Canal Zone in an amount equal to one year's salary at the
time of death. A death gratuity payment shall be made under this
subsection only if the survivors entitled to payment under this
subsection are entitled to elect monthly compensation under
section 3133, title 5, United States Code because the death
resulted from an injury (excluding a disease proximately caused
by the employment) sustained in the performance of duty, without

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regard to whether such survivor elects to waive compensation
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under such section 5155. Any death gratuity payment made under

this subsection shall be held to have been a gift and shall be in addition to any other benefit payable from any source. A death gratuity payment under this subsection shall be made as follows:

(1) first, to the widow or widower; (2) second, to the child, or children in equal shares, if there is no widow or widower; and (3) third, to the dependent parent, or dependent parents in equal shares if there is no widow, widower or child. If there is no survivor entitled to payment under this subsection, no payment shall be made. As used in this subsection, the terms "widow", "widower", "child", and "parent" shall have the same meaning given each such term under section 8101, title 5, United States Code.

(i) (1) Whenever the President determines that it would be appropriate for the purpose of maintaining conformity between provisions of law relating to travel and related expenses and death gratuities of the Foreign Service of the United States and provisions of law relating to travel and related expenses and death gratuities of employees of the Agency, he may, by Executive order, extend to Agency employees, a provision of law enacted after January 1, 1976, which:

(A) amends part B, subchapter IX, chapter 14, title 22, United States Code, or

(B) amends section 2679a, chapter 38, title 22, United States Code, or

(C) otherwise affects provisions of law relating to travel and related expenses or death gratuities of the Foreign Service.

Any such order shall extend such provision of law so that such provision applies in like manner with respect to Agency employees. Any such order shall have the force and effect of law and may be given retroactive effect to a date not

(2) Any provisions of an Executive order issued pursuant to this subsection shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith--

(A) all provisions of law enacted prior to the effective date of the provisions of such Executive order, and

(B) any prior provision of any Executive order issued under authority of this section.

(3) An Executive order under this subsection may not become effective until 60 days after the President submits the proposed order to those committees of the Senate and House of Representatives having jurisdiction over the subject matter of the order.

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Sec. 418. Employees of the Agency shall participate in the regular Federal civil service retirement system pursuant to subchapter III of chapter 83 of title 5, United States Code. The Director may, however, continue to designate for participation in the Central Intelligence Agency Retirement and Disability System, authorized by the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (78 Stat. 1043; 50 U.S.C. 403 note), certain employees of the Agency whose duties are either (1) in support of Agency activities abroad ^{deemed to be} and are highly hazardous to life or health or (2) so specialized ^{as to be clearly} distinguishable from normal government employment; but the number of employees of the Agency which may retire on an annuity under such system in any period may not exceed the limits prescribed by law.

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Sec. 419. Subject to the provisions of section 412(o) of this Act, no provision of law shall be construed to require the Director or any other officer or employee of the United States to disclose the organization, function, name, official title, or salary of any person employed by the Agency, or the number of persons employed by the Agency, unless such provision specifically requires such disclosure and expressly cites this section.

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TRANSFER OF PERSONNEL, PROPERTY, AND FUNCTIONS

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Sec. 420. (a) All personnel employed by the Central

Intelligence Agency, as in effect on the day before the effective date of this title, and all obligations, contracts, properties, and records employed, held, or used primarily in connection with any function to be performed by the Agency under this title, are transferred to the Director.

(b) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges which have become effective in the exercise of functions transferred under this title and which are in effect on the day before the effective date of this title, shall continue in effect until modified, terminated, superseded, set aside, or repealed by the Director, by any court of competent jurisdiction, or by operation of law.

(c) The provisions of this title shall not affect any proceedings pending before the Central Intelligence Agency as in effect prior to the effective date of this title.

(d) No suit, action, or other proceeding begun by or against any officer in his official capacity in the Central Intelligence Agency, as in effect prior to the effective date of this title, shall abate by reason of enactment of this title.

(e) With respect to any function transferred by this title and exercised after the effective date of this title, reference in any other Federal law to any department, agency, office, or part thereof shall be deemed to refer to the department, agency, or office in which such function is vested pursuant to this title.

Sec. 421. (a) Section 102 of the National Security Act of 1947 and the Central Intelligence Agency Act of 1949 are repealed.

(b) Section 662 of the Foreign Assistance Act of 1961, as amended, is repealed.

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EFFECTIVE DATE

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Sec. 422. This title shall become effective the first day of the third calendar month following the month in which it is enacted.

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How far does the phrase "supervisor of" in line 9 extend into administrative matters or is it limited to those of intelligence nature?

Section 413(f), page 7 (182)

Provides for the Agency to act as the agent of the DNI in certain activities.

Comment:

If the DNI is also the D/CIA, is CIA an agent of its own Director? Agree with OLC proposed revision if it is determined the DNI is always the D/CIA. Would the provision of 412(a) for the D/CIA (if not also the DNI) to be under the supervision of the DNI support use of "agent" in this context.

Section 413(g) (5), page 7 (183)

Authorizes the Agency to provide various services to the Office of the DNI, including administrative services.

Comment:

Assume "administrative" includes budget, finance, personnel, logistics, et al. OLC raises the issue of a definition for the Office of the DNI and explicit charge on CIA for the support of the ODNI. A clear definition of the ODNI and the relationship to CIA is essential if the services noted in this section are to be properly provided. The impact on the CIA budget is only one facet. Can the CIA Director of Personnel be delegated the power to appoint, promote and separate the employees of another agency? Would the officers of CIA responsible

for providing the services enumerated here hold dual status, e.g., Director of Personnel for CIA and for ODNI? If the DNI is not the D/CIA, how would such powers be delegated . . . through the D/CIA? Is the thrust here for the relationship of ODNI and CIA to be comparable to Justice Department and the FBI? In that case, however, we believe each one has its own support structure.

This question is also related to item 36 of OLC issues papers where the question of the authorities of the IG and General Counsel for ODNI duties is raised.

Section 421(a)(6), page 10 (186)

Background investigations.

Comment:

The following categories of personnel should be added: "employees, contractors and employees of contractors" as provided for in 423(a)(1).

In this connection, referring to Section 114(m) and (n) of Title I, which as now written appears to give the DNI authority to appoint, promote and separate personnel in any of the agencies of the Intelligence Community, and if that is the intent of the provision in Section 114, this section should probably be expanded to include DNI authority to do background investigations on any of the same category of individuals elsewhere in the Intelligence Community. At a minimum, however, if the CIA is to provide the administrative support to the ODNI, (Section 413), the authority to do background investigations should be extended to the Office of the DNI.

Section 421(a)(8), page 10 (186)

Authorizes the Agency to perform inspection, audit, public affairs, legal and legislative services.

Comment:

OLC proposes inclusion of "budgetary and personnel services". The inclusion of budgetary and personnel would depend on the reason for listing the services in (a)(8). If these are considered normal Agency functions, the two should be added, but on the other hand, why list what are normal to any agency of the Federal Government? If the listing is intended to allow for the Agency to provide its own services in these areas, thereby avoiding the use of CSC, Justice Department or GAO, budgetary and personnel functions are provided for in other sections of the Title. Defer to the intent of the section.

Section 421(i), page 13 (190)

Authorizes employees of the Agency to carry firearms within the United States for the protection of certain officials.

Comment:

Question if this list of officials should not provide for officials of other government agencies or departments as directed by the AG, NSC or the President. The Agency is required to supplement the Secret Service in certain situations; it is assumed guns are carried.

Section 421(j), page 13 (191)

Provides for appointment, promotion and separation of personnel but limits appointment and promotion authority to EP V.

Comment:

Authority to promote within present law is basically unlimited, although the practice has been restricted to EP IV. When the Director ICS was appointed, OMB approved the EP III level.

As written, this section would require the D/CIA to go to Congress for any promotion to EP IV, the level of the present Deputy Directors.

This S 2525 version of Title I, Section 116, provides for the ADNIs, but does not specify a grade; earlier drafts had the ADNI positions at EP III. Section 426 which establishes the General Counsel and Inspector General does not include grades in this version either; they previously were EP IV and V respectively. While General Counsel is a Presidential appointment, Inspector General is appointed by the D/CIA. Does this mean Deputy Director level may not exceed EP V or that Deputy Directors of CIA will require Congressional approval.

Paragraph (j)(1), (2) and (4), page 13 and 14 (191-2)

Note the use of "separate" in Section (j)(1) and "terminate" in Section (j)(2) and repeat in (j)(4). Is there any reason for the different terminology? "Separate" certainly includes for "cause" (e.g., incompetence, personal behavior) as well as surplus. The "termination" for reasons of national security is only another version of cause. Making a specific difference here could create problems for future interpretation unless the legislative history covers the reason; on the other hand use of one term or the other in both instances would avoid future problems of any intent of difference.

Paragraph (j)(3), page 13 (192)

Question if the use of "position" here is meant to include substances as well as number, e.g., the jobs with duties and responsibilities as now exist are transferred to CIA. Does any subsequent change in substance but not number require going back to Congress for approval or can it be assumed the law would provide the SG and EP VI and EP V only in terms of numbers requiring Congressional action only when our present ceiling is exceeded. Section 421(j)(1), however, limits new promotions to the EP V level.

Paragraph (j)(4), page 14 (192)

Provides for employment of separated or terminated individuals in other agencies of government if declared eligible by the CSC.

While this is the same wording as the present law, and includes the new benefit of conversion to competitive status with the transfer, we question if it is really meant to approve employment in the government only if CSC approves. There are jobs in the Federal Government not in the competitive service and which do not necessarily require CSC approval. Propose it be written: "declared eligible for such employment under government rules, and the Civil Service Commission may place such officer or employee in a position in the competitive civil service in the same manner as an . . ."

N.B. The provision herein for competitive status on transfer with CSC approval is in conflict with the current provisions of Title 5 on this subject. We defer to OLC whether this new law would take precedence over the current statutes relative to the competitive service.

Section 441(a), page 27 (204)

Defines "employee" and restricts benefits under certain circumstances.

Comment:

Concur with OLC and prefer this section establish the contract employee status more clearly, although we are advised the phrase "unless specifically indicated" is meant to provide for the provision of employee status and benefits in contracts. A wording such as proposed by OLC would make the situation clear for future generations interpreting this law.

We also believe the limit on employee benefits when the individual is resident at the foreign post where initially employed is too restrictive and requires modification. The Agency has in the past employed on a full-time career basis U.S. citizens, resident at foreign posts at the time of employment as the result of former U.S. Government or private industry employment. It has been practice to provide return travel to the United States at the completion of the tour normal for the post, usually two years.

Quarters and other allowances have also been paid in some instances. If employment is under contract, presume the benefits could be written into the contract, though that could be considered flaunting the intent. Believe this is meant to apply to the individual who is a legal resident of the foreign area with no intent of leaving the post, i.e., the FS resident staff employees or local hire. Propose it be amended to include "legal resident" as part of the definition if necessary to include this restriction.

Section 441(b)(1) and (2), page 27 (205)

OLC proposes the use of "comparable" in the sections establishing the various travel benefits and allowances. We see no difference in "accordance with" or "comparable" but defer to the legal meanings of the words.

Section 441(c)(1), page 27 (206)

Provides for an Executive Order to grant CIA employees benefits which are provided to the Foreign Service by law, which are not amendments to Title IX of the Foreign Service.

Comment:

Is the intent of this provision to obtain benefits, such as the Foreign Service yearly educational travel, which was provided by amendment to the Appropriations Act of the Foreign Service rather than as an amendment to the normal travel and allowance sections of the statute. If so, we concur the Executive Order is probably the only effective way of obtaining the benefit . . . assuming the provision herein provides the necessary authority for an Executive Order to override a specific limitation on the benefit such as was included in the educational travel provision.

Section 441(d)(1), page 29 (207)

This limits the Director's authority in payment of expense, benefits and allowances to the equivalent of those provided for in Chapter 57 and 59 of Title V and Title IX of the Foreign Service, but allows for a different "means" of payment.

Comment:

This section would appear to limit the Agency's authority to pay allowances only as provided for in Title 5 U.S. Code and would eliminate the authorities exercised under Section 8b of CIA Act of 1949. Under the current law, among other special benefits, the Agency pays supplemental quarters allowances of its personnel, representation allowance, NOC Premium Pay, equalization, and sometimes supplemental education allowances to NOCers. Attached is a list of some of the benefits provided Agency employees which are based on the DCI's authority under Section 8(b) and which would probably be unavailable under the proposed legislation.

An earlier version of Title IV included a clause which authorized the expenditure of funds for extraordinary or emergency nature. As noted in the OLC issues paper, item 31, this section has been eliminated. We do not see Section 425 in the S 2525 version of the Title as encompassing the intent of the original paragraph and would prefer a clearer statement.

Whether the former clause is returned to the Act or the legislative history clarifies the point in this section, it is proposed that the wording of Section 441(d) be revised to permit the spending of funds in excess of the benefits and allowances specified in 441(b) and (c) where required by extraordinary circumstances (NOC) or operational necessity.

Section 442, page 30 (208)

Retirement System.

Comment:

Concur with OLC recommendation to delete the specifics of selection for participation in CIARDS. Reference to the law itself should be sufficient.

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SECTION 8(b) AUTHORITIES
CIA ACT OF 1949

Benefits and Services

Conducting various insurance programs "in house" for cover reasons.

Employee's Activity Association

Sports Program - Health Room, etc.

"In house" processing of FECA claims for cover reasons.

Centralized service for arranging personnel travel and movement of HHE.

Payment of per diem for overseas out-patient medical travel, not including hospitalization.

Retirement Activities

Retirement relocation benefits

External employment assistance.

Allowances and Benefits

Quarters Allowance in excess of standard rates

Fix-up costs of Quarters.

Transportation Allowance.

Furnishing QP furniture and automobiles

Representation Allowances

Advance Funds for Refundable School Bonds

Emergency Visitation without deductible

25X1

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Allowances and Benefits (Continued)

Casualty Plan, Special Payments

Higher Differential in Special Cases, e.g., at 35%

25X1

Authorities Utilized for Non-official Cover Personnel
(in addition to above)

Equalization Allowance

Education Allowance in excess of standard rates

TLA/SPA paid in excess of 90 days

Payment of Unemployment Compensation

NOC Premium Pay

Escrow Leave Accounts where cover does not permit the use of equivalent government leave.

Pay Social Security taxes over \$300

Shipment of excess HHE if keeping with cover

Others

25X1

Separation compensation for contract employees

Bonuses for contract employees

Independent Contractors under personal service contracts vis procurement

Purchase of insurance policies for independent contractors

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Others (Continued)

Authority to pay in excess of government schedules. (There has been one in excess of EP 1.)

Operational loans to agents

DCI authority to waive overpayment of Confidential Funds

Premium Pay

Limitation on payment of overtime

Eight hour contribution by GS-12 and above

Impact on Nonstandard Work Week based on 80 hour pay period (FPMs provide overtime on basis of 8 hour day or 40 hour week).

8 MAR 1978

MEMORANDUM FOR: Assistant for Information, DDA

FROM: Robert W. Gambino
Director of Security

SUBJECT: Intelligence Charter Legislation - Title IV

REFERENCE: Memorandum from Associate Director -
Management, National Foreign Assessment
Center, subject: Intelligence Charter
Legislation, dated 23 February 1978
(NFAC 729-78)

The Office of Security has reviewed the latest draft of Title IV together with the Office of Legislative Counsel's paper which was attached to reference. We offer the following comments:

a. Section 421(a)(6) - We stress and reiterate our previously expressed concern that Title IV fails to grant authority to conduct investigations on persons other than applicants. We urge that this section be amended as follows: "Protect the security of its installations, activities, information and personnel by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA, or access to its facilities as are necessary."

b. Section 421(h) and (i) - The explicit firearms-carrying authority of Section 421(i), following as it does Section 421(h) which speaks of "police powers," could be construed to imply that firearms may not be worn for the purpose of protecting installations and grounds. We believe the firearms-carrying authority should be extended to include the protection of Agency installations,

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grounds and classified material. The latter point is intended to encompass material not only in transit (courier-type situation) but in storage, either temporary or permanent. Further, we assume that the authority to carry firearms overseas for the purposes cited, in accordance with applicable foreign law, is intended.

c. Section 421(j)(4) - We continue to feel that the ability of a person fired by the Director for security reasons to gain federal employment should be limited to positions not involving access to classified intelligence information. Otherwise, it seems to us, the Civil Service Commission is given the power to undermine the Director's responsibilities to protect sources and methods.

d. Section 423(1) - This section should be amended to reflect the authority to seek assistance from state and local law enforcement agencies in the conduct of background and security investigations "as authorized by Section 421(a)(6) above." This, of course, assumes the implementation of our recommendation on the latter section. The point is that we must have the authority to run police checks in all authorized investigations.



Robert W. Gambino

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